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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,400	08/28/2001	Devin Eugene Mix	12929.1064US01	6151

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EXAMINER

GREEN, BRIAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 03/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,400

Applicant(s)

MIX, DEVIN EUGENE

Examiner

Brian K. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6, 15, 17, 24, 30, 38 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-14, 16, 18-23, 25-29, 31-37, 39-43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of species I (figures 1-8) and embodiment 2 (figure 6) in Paper No. 8 is acknowledged.

Claims 4,6,15,17,24,30,38, and 44 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

Drawings

The drawings are objected to because in figure 2, the cross-sections A-A and B-B should indicate the figures in which the cross-sections are shown, i.e. 3-3, 4-4. A proposed drawing correction or corrected drawings are required in reply to the Office. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: on page 3, line 26, "of Figure 8" is confusing. On page 12, line 12, "7" should apparently be "6".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 3,5,14,16,23,25-29,31-37,39-43, and 45-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 3,5,14,16,23,29,37,43 the word "means" is preceded by the word(s) "mechanical" in an attempt to use a "means" clause to recite a claim element as a means for

performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Butterfield (U.S. Patent No. 4,965,707).

Butterfield shows in figures 1-7 a simulated fireplace comprising a front panel (7), a flame element (14), and a blower (17). In claim 8, Butterfield discloses the idea of making the flame element formed out of silk. In regard to claim 9, the flame element includes a coating (see column 3, lines 65-68) which reinforces the flame element.

Claims 1-3,5,7,9,12-14,16,18,20,23,25,27-29,31,32,34,37,39,40,42,43,45,46, and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Great Britain 2,315,543.

G.B. '543 shows in figures 1-5 a simulated fireplace comprising a front panel (19), a flame element (25,26), a blower (18), and a mechanical device (22,23) for moving the flame element. In regard to claims 2,5,13,16,28,31,39, and 45, G.B. '543 discloses the use of a blower (18) and an exhaust (16). Some of the air moving from the blower and exiting at outlet (16) would move

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the flame elements slightly. In regard to claims 9 and 20, the flame element includes reinforcing, see page 7, lines 13-17.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23,28,37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Korneliussen (U.S. Patent No. 6,155,837).

Korneliussen shows in figures 1-6 a simulated flame comprising a flame element (5), a blower, and a mechanical device (31,35,36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butterfield (U.S. Patent No. 4,965,707) in view of Hecker (U.S. Patent No. 5,426,879).

Butterfield discloses the applicant's basic inventive concept except for attaching mirrored (reflective) surfaces to the back and side panels. Hecker discloses in column 5, lines 50-55 the idea of placing reflective material on the back and side panels to increase the amount of light reaching the front face. In view of the teachings of Hecker it would have been obvious to one in the art to modify Butterfield by attaching reflective surfaces to the back and side panels since this

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would allow the flame element to be illuminated in a more brilliant manner which would create a more amusing and aesthetically pleasing display.

Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butterfield (U.S. Patent No. 4,965,707) in view of Hess et al. (U.S. Patent No. 5,462,580).

Butterfield discloses the applicant's basic inventive concept except for attaching a log set to the device. Butterfield shows in figure 1 the idea of attaching a coal set (8) to the device. Hess et al. shows in figures 1 and 2 a log set (26) attached to a display device. In view of the teachings of Hess et al. it would have been obvious to one in the art to modify Butterfield by replacing the coal set with a log set since this would create a more amusing and aesthetically pleasing display device.

Claims 8,19,26,33,41, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain 2,315,543 in view of Butterfield (U.S. Patent No. 4,965,707).

G.B. '543 discloses the applicant's basic inventive concept except for making the flame element out of silk. Butterfield discloses in column 3, lines 65-69 the idea of making a flame element out of silk. In view of the teachings of Butterfield it would have been obvious to one in the art to modify G.B. '543 by making the flame element out of silk since this would create a more realistic and aesthetically pleasing display device.

Claims 10,21, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain 2,315,543 in view of Hecker (U.S. Patent No. 5,426,879).

G.B. '543 discloses the applicant's basic inventive concept except for attaching mirrored (reflective) surfaces to the back and side panels. Hecker discloses in column 5, lines 50-55 the idea of placing reflective material on the back and side panels to increase the amount of light reaching the front face. In view of the teachings of Hecker it would have been obvious to one in the art to modify G.B. '543 by attaching reflective surfaces to the back and side panels since this would allow the flame element to be illuminated in a more brilliant manner which would create a more amusing and aesthetically pleasing display.

Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain 2,315,543 in view of Hess et al. (U.S. Patent No. 5,462,580).

G.B. '543 discloses the applicant's basic inventive concept except for attaching a log set to the device and placing it between the front panel and flame element. Hess et al. shows in figures 1 and 2 a log set (26) attached to a display device placed between a display panel and flame element. In view of the teachings of Hess et al. it would have been obvious to one in the art to modify G.B. '543 by attaching a log set between the display panel and flame element since this would create a more amusing and aesthetically pleasing display and placing the log set between the display panel and flame element would help to protect the log set from dirt, dust, and damage.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Reed et al., Harrison, Moss, Conroy et al., Heyden, Lin, and Great Britain '577 teach the use of a flame element that is movable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.


BRIAN K. GREEN
PRIMARY EXAMINER

bkg
March 5, 2003